

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q86738

Pascal BRUNA

Appln. No.: 10/532,073

Group Art Unit: 3754

Confirmation No.: 6183

Examiner: Frederick C. NICOLAS

Filed: April 21, 2005

For: ELECTRONIC DISPLAY DEVICE AND FLUID PRODUCT DISPENSING DEVICE
COMPRISING SAME

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated January 25, 2010. Entry of this Reply Brief is respectfully requested.

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REPLY BRIEF UNDER 37 C.F.R. § 41.41
U.S. Appln. No.: 10/532,073

Attorney Docket No. Q86738

STATUS OF CLAIMS

Claims 1-15 are pending and are rejected. The rejections of claims 1-15 are being appealed.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues on appeal are summarized as follows:

1. Claims 1-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017) and Liou (US 5,895,159).

ARGUMENT

In this Reply Brief, Appellant addresses, *infra*, certain points raised in the Examiner's Answer as mailed on January 25, 2010.

1. Whether the Examiner committed error in rejecting claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017) and Liou (US 5,895,159).

The Examiner relies on Liou for disclosing "a current producer (6) that produces an instantaneous current upon a pressing bar (31) striking an internal flint (col. 2, ll. 47-53) in order to avoid the use of an external power source (col. 1, ll. 45-55)." (See Answer, page 5, last sentence.) The Examiner further states that "Liou then teaches in column 1, lines 45-50 that one way to replace conventional electrical wire power sources (which are well known equivalents to batteries) is to use a striking bar/flint combination [i.e. current producer 6] to produce an instantaneous electrical current." (Answer, page 7, lines 15-17.) The Examiner then reaches the conclusion that the current producer 6 is "well known" and can be substituted for a battery supply. (Answer, page 8, lines 4-9.) The Examiner's characterization of Liou is in error.

Nothing in Liou indicates that the current producer 6 is suitable for replacing, or is a well known substitute for, a power supply such as a battery. One of the portions of Liou relied on by the Examiner states that "[a] primary object of the present invention is to provide a heat-melting glue gun which uses burning gas instead of electric resistance to produce heat for melting the glue material in the gun." (Liou, col. 1, lines 45-50, emphasis added.) Thus, in Liou, the burning gas (and not the current producer 60 as alleged by the Examiner) is used to replace an electric

resistance heater in the glue gun. The current producer 60 only provides a spark that ignites the gas. (*See* Liou, col. 2, lines 47-60.) Since the current producer 60 in Liou is only used to ignite a gas, nothing in Liou indicates that the current producer would be suitable to replace a power source, such as batteries, or that it would have been “well known” to an artisan to make such a substitution. Further, nothing in Liou would indicate that the current producer 60 would be suitable for providing power for the LCD displays in either Walker or Barberi. Therefore, there would have been no rational reason for one of ordinary skill to combine the current producer 60 in Liou with either Barberi or Walker.

The Examiner also states that “[t]he fact that Liou uses the current for ignition is irrelevant.” (Answer, page 7, lines 21-22.) Applicants note that Liou can only be interpreted for what it would reasonably convey to one of ordinary skill, and the fact that Liou uses the current producer to ignite a gas, without any additional uses, would indicate to one of ordinary skill that the current producer is only suitable for igniting a gas or performing some ignition-related function. Thus, the fact that Liou uses the current producer 60 for ignition is entirely relevant when considering whether it would have been obvious to combine the current producer 60 with another device.

Moreover, as discussed below, the glue gun in Liou and the device in Walker are operated in completely different manners and, therefore, one of ordinary skill in the art of the present application would not have considered combining Liou with Walker.

Walker discloses a metered dose inhaler, which counts the dispensing of a dose during actuation of the device, said counting being provided by an electronic circuit that is closed during said actuation. In Walker, there is no separate striking or force-actuation that is needed to provide said circuit closing.

In Liou, however, the current producer 60 is an individual component that is operated separately from the actuation of the glue gun. (*See* Liou, FIG. 1, showing the pressing bar 31 for striking the flint of the current producer 60 being separate from the glue stick feeding means 50.) The current producer 60 in Liou is actuated separately from the glue gun 50, and requires a strike or force-actuation to produce a spark. (*See* Liou, col. 2, lines 47-60.) One skilled in the art starting with the device disclosed in Walker, would not have sought to improve the metered dose inhaler in Walker with the glue gun disclosed in Liou because they are unrelated devices and operate in completely different manners.

For at least the reasons stated here and in Appellant's Appeal Brief, the Examiner's rejection under 35 U.S.C. § 103 is in error and should be reversed.

2. Provisional Rejections

At page 10 of the Examiner's Answer, the Examiner requests that the Board affirm the rejection of claims 1-15 on the grounds of non-statutory obviousness-type double patenting over claims 1-3, 5-11, and 13-20 of copending Application No. 10/532,961.

Neither the claims of the present application nor the claims of co-pending Application No. 10/532,961 have issued. Accordingly, this rejection remains *provisional*, and not actual.

Under MPEP § 804(I)(B)(1), if the only rejection remaining is a provisional obviousness-type double patenting rejection, the Examiner should withdraw the provisional obviousness-type double patenting rejection in the earlier filed application. MPEP § 804(I)(B)(1) states:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue.

MPEP § 804(I)(B)(1) (underlining added).

Since the ODP rejection is *provisional*, Applicant defers addressing the merits of the ODP rejection in accordance with MPEP § 804(I)(B). By not addressing the provisional ODP rejection, Applicant makes no assertion regarding the merits of this rejection.

The present application is the earlier filed application since it was filed on April 21, 2005, and the co-pending application 10/532,961 was filed on April 27, 2005. If this appeal is successful, Appellant requests that the Board withhold from making a decision on the provisional ODP rejection since the present application is the earlier filed application and the provisional ODP rejection would be withdrawn as the only remaining rejection.

CONCLUSION

For the above reasons, as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



Stuart S. Levy
Registration No. 61,474

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

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